tion by the master to drive furiously, or in the way called carelessly, in his park, would not be wrong in the master, it cannot be made so by a trespasser getting there, and being hurt; so that, quoad the master, it is damnum absque injuria; and if not a wrong in the master when expressly ordered, it cannot be if done by the servant against his orders. The defendants might, if they had thought fit, have directed their servants to move and propel trucks against other trucks without any notice or precaution—in short to do what the plaintiff complains of; and if their servants chose to work on those terms, although it might be a wasteful way of using their engines and carriages, no one could say it was wrongful. Then the deceased cannot make it so by coming there himself. Upon these grounds, then, whether he is considered a wrongdoer or not, we are of opinion the action cannot be maintained, and that the plea is good.

The same consideration determines the points of pleading in the defendants' favor. "Not guilty" puts in issue the act complained of. Now, the defendants did not, by their servants, carelessly, negligently, and improperly move the trucks; nor was the deceased injured thereby by the negligence, carelessness, and improper conduct of the defendants by their servants, as such. There was no general carelessness or wrong in the act complained of—a personal wrong in the defendants' servants relatively to the deceased being there. There was, therefore, no negligence in the defendants by their servants, and they are not guilty. The verdict on that plea, therefore, must be for them.

Judgment for the defendants on the demurrer, and rule absolute to enter the verdict for them on the first issue.

SHORT NOTES OF RECENT ENGLISH CASES;

BEING A SELECTION OF ADJUDGED POINTS.

HUTCHISON *vs.* SKELTON. 2 Macqueen, 495.

Ademption.

"Cases of ademption proceed upon this ground; that if a testator makes a will, and gives that which is in the nature of a portion to his daughter, say £5,000 *simpliciter*, and afterwards in his lifetime the daughter marries,

and he gives to that daughter £1,000, even though he does not give it, as he had given it by the will *simpliciter*, but settles it upon herself for her life, and afterwards to go to her children, still that must be intended to be taken in satisfaction of what has been given by the will; because the courts, in this country at least, have not considered that the circumstance of a limited interest, such as an interest for life, being given to the daughter, and after the death of the daughter an absolute interest being given to the children of that daughter, makes any substantial difference."—*Per* Lord Cranworth, C.

THE ATTORNEY-GENERAL *vs.* THE CORPORATION OF BEVERLEY.
6 De Gex, Mac. & G., 263.

Appeals—Duty of Judges—Hearing.

"It is generally understood to be the duty of an appellate judge to leave undisturbed a decision where he is not thoroughly pursuaded that there has been error. It is, I believe in appeals, as much a rule or maxim of the English Court of Chancery as it was of the civil law, that to doubt—to entertain grave and solid doubt, is to affirm—because, to reverse is to disturb an existing state of things. Certainly, it has not been uncommon for judges, when reversing, to avow that they have hesitated, and to express distrust; nor, considering that sometimes, or perhaps often, the judge appealed from is a man not less likely to be accurate than the judge appealed to (and how often reversals and affirmances are alike reversed), does it appear to me that this can justly be blamed. But still, in whatever form, and with whatsoever sincerity, terms of deference and diffidence may be used, a reversal can scarcely proceed from a judge fit for his office, without a conviction in his own mind that he is right."—*Per* Lord Justice Knight Bruce.

SAVERY *vs.* KING. 5 Ho. L. Cas., 655.

Constructive Fraud—Dealings between Father and Son—Solicitor and Client.

"The legal right of a person who has attained the age of twenty one to execute deeds and deal with his property, is indisputable. But where a son, recently after attaining his majority, makes over property to his father without consideration, or for an inadequate consideration, a court of equity expects that the father shall be able to justify what has been done;

to show, at all events, that the son was really a free agent—that he had adequate independent advice—that he was not taking an imprudent step under parental influence—and that he perfectly understood the nature and extent of the sacrifice he was making—and that he was desirous of making it.

So, again, where a solicitor purchases or obtains a benefit from a client, a court of equity expects him to be able to show that he has taken no advantage of his professional position; that the client was so dealing with him as to be free from the influence which a solicitor must necessarily possess; and that the solicitor has done as much to protect his client's interest, as he would have done in the case of the client's dealing with a stranger. This duty exists on the part of the solicitor in all cases where he is dealing with any client; but, of course, where the client is a very young man, who has only just attained his majority, and who is so far unemancipated as to be still living under his father's roof as part of his family, the duty is, if not stronger, at all events more obvious."—*Per* Lord Cranworth, C.

GREENFIELD *vs.* BATES. 5 Ir. Ch. Rep., 219.

Solicitor purchasing from Client—Omission of Indemnity on Assignment of Leaseholds supplied, Deed being drawn by the Solicitor.

A solicitor purchased a leasehold interest from his client, and himself prepared the assignment, which contained no covenant to indemnify the vendor against any future breaches of the covenants in the lease, but did contain these words, "subject to the payment of the yearly rent, and to the performance of the several covenants in the said indenture of demise, reserved and contained, on the tenant or lessee's part to be paid, done and performed." It was held by the Lord Chancellor of Ireland, that the executor of the solicitor was bound to indemnify the vendor against the rent and covenants. "The instrument," said his lordship, "constituting the contract between the parties, conveys the property subject to the payment of the yearly rents, and to the performance of the covenants in the said indenture of demise, reserved and contained, that is to say, in words which for a time were supposed by the courts of law to amount to a covenant for indemnity. It is true that it has since been determined that they have not that effect; but they afford clear evidence, to my mind, of the intention of the parties, that the assignee was to pay the rents and perform the covenants; and that the assignor was never to be called on for that purpose.

"Here was the relation of attorney and client subsisting; the attorney prepared the conveyance to himself; he omitted to introduce the covenant which it was his duty to have inserted. *Can he be permitted to derive any benefit from his own neglect?* I do not think he can. There might, to be sure, have been a case where parties, even though standing in such a relation, might have agreed that in consideration of an additional price, the vendor would run his chance; but that would require an express agreement; and there is nothing to show me that any such agreement existed. There is nothing to cut down the liability of the attorney; in fact, the inference is quite the other way. I must therefore hold, though it appears a hard case against the respondent, that, in some form to be settled by the master, he, as executor, must give an indemnity."

TAYLOR *vs.* LAIRD. 1 H. & N., 266.

Contract for service—Payment at a certain Rate per Month—Abandonment of Contract before Expiration of Term—Right to recover Monthly Salary.

The defendant having contracted with the Lords of the Admiralty to provide a steam vessel for exploring the river Niger, wrote to the plaintiff as follows:—"I am willing to give you command of the steamer, destined for an exploring and trading voyage up the river Niger, and its tributaries. Your pay to be at the rate of £50 per month, commencing from the 1st December, 1853, and a commission of 20 per cent. on the net proceeds of the produce you may bring down." In reply, the plaintiff wrote to the defendant as follows:—"In answer to your letter of yesterday, offering me the command of the vessel, to go out in a trading and exploring voyage to the river Niger and its tributaries, at a fixed pay of £50 per month, and 20 per cent. on the net proceeds of the goods obtained, I beg leave to say that I accept the service and the terms you mention."

The vessel proceeded up the Niger under the command of the plaintiff, as far as Dagbo, when the plaintiff refused to proceed further, and abandoned the command.

The Court of Exchequer held, that this was not an entire contract for the whole voyage, but a contract which gave a cause of action for the salary as each month arose, and which, when once vested, was not subject to be lost or divested by the plaintiff's desertion or abandonment of the contract.

RANDELL *vs.* TRIMEN. 18 Common Bench, 786.

False Representation of Authority—Costs of Defence of a former Action induced by the Misconduct of the Defendant.

The declaration stated that the defendant, who was employed as architect by a church committee to superintend the building of a church, falsely and fraudulently represented, and pretended that he was authorized by the committee to order, and did order stone of the plaintiffs for the building of the said church for, and on account of, and to be charged to the committee, and that the plaintiffs relying on that representation, and believing that the defendant had authority from the committee to order the stone on his account, delivered the same, and the same was used in the building of the church; whereas in truth and in fact the defendant was not, as he well knew, authorized so to order the said stone. It then went on to aver, that the committee refusing to pay for the stone, the plaintiffs, trusting in the defendant's representation, sued the committee for the price, and failed in their action, and had to pay the committee's costs, and also the costs incurred by their own attorneys.

The Court of Common Pleas held, that the declaration sufficiently disclosed a cause of action; and it appearing that the defendant had no such authority as he represented, that the plaintiffs were entitled to recover, not only the value of the stone, but also the costs they had incurred and paid in the former action.

TARRANT *vs.* WEBB. 18 Common Bench, 797.

Master and Servant—Liability of Master for Accidental Injury to Servant.

The plaintiff, a painter in the employ of the defendant, sustained an injury from the failure of a scaffolding upon which he was working, and which had been erected by another servant of the defendant. In leaving the case to the jury the judge told them, that if they were of opinion that the scaffolding was erected under the personal direction and interference of the defendant, and was insufficient, or that the person employed by the defendant for the purpose of erecting it was an incompetent person, the plaintiff was entitled to recover.

The Court of Common Pleas held this a misdirection, laying down the rule that a master is not generally responsible for an injury to a servant, from the negligence of a fellow-servant; but the rule is subject to this qualification, that the master uses reasonable care in the selection of the servant.